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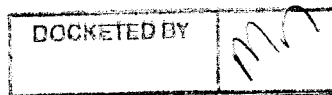
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JAN -8 2010



IN THE MATTER OF THE APPLICATION
OF TUCSON ELECTRIC POWER
COMPANY FOR APPROVAL OF ITS
RENEWABLE ENERGY STANDARD AND
TARIFF IMPLEMENTATION PLAN.

Docket No. E-01933A-09-0340

**OBJECTIONS/EXCEPTIONS OF
FREEPORT-MCMORAN SIERRITA
INC. AND ARIZONANS FOR
ELECTRIC CHOICE AND
COMPETITION**

Freeport-McMoRan Sierrita Inc. and Arizonans for Electric Choice and Competition (collectively "AECC") hereby submit the following Objections/Exceptions to Tucson Electric Power Company ("TEP") 2010 Renewable Energy Standard Tariff Implementation Plan and any provisions of the Proposed Order that are inconsistent with AECC's Objections.

On July 1, 2009, Tucson Electric Power Company ("TEP") filed its 2010 Renewable Energy Standard Tariff Implementation Plan ("TEP REST Plan"). This filing was supplemented by TEP on September 21, 2009.

AECC has reviewed the proposed TEP REST Plan and objects to various provisions as explained below. AECC respectfully requests that the Arizona Corporation Commission ("Commission") either: (1) modify the TEP REST Plan as recommended by AECC herein, or (2) suspend any approval of the TEP REST Plan until the issues raised by AECC (or other parties) can be more thoroughly considered.

I. AECC OBJECTIONS

A. The TEP REST Plan Contains Surcharge Options That Violate the TEP Settlement Agreement.

AECC is signatory to the TEP Settlement Agreement approved by the Commission in Decision No. 70628 (Docket No. E-01933A-07-0402). This Agreement establishes

1 parameters for TEP rates through December 31, 2012. Section VIII of the TEP Settlement
2 Agreement contains provisions pertaining to aspects of TEP's Renewable Energy
3 Standard and Tariff ("REST") program, including the design of charges levied to recover
4 REST-related costs.

5 Two of the three surcharge options included in the proposed TEP REST Plan
6 violate both the letter and spirit of Section VIII of the TEP Settlement Agreement.
7 Specifically, neither the originally-filed REST Surcharge nor the "Modified Tariff"
8 Surcharge proposed by TEP in its supplemental filing includes a monthly cap in the rate
9 design as required by the TEP Settlement Agreement. The only REST Surcharge option
10 filed by TEP that is consistent with the TEP Settlement Agreement is the "Proportional"
11 option included in TEP's supplemental filing.

12 Section VIII of the TEP Settlement Agreement contains the following provisions:

13 8.1 The Signatories agree that the REST adjustor mechanism
14 recommended by Staff in its Direct Rate Design Testimony
15 shall be adopted.

16 8.2 The initial rates of the REST adjustor mechanism will be the
17 same as the REST Tariff Charges approved in Decision No.
18 70314.

19 8.3 Subsequent changes to the REST Adjustor rates will be set in
20 conjunction with the annual Renewable Energy Implementation
21 Plan submitted by TEP and approved by the Commission
22 pursuant to the Renewable Energy Standard and Tariff rules.

23 The REST adjustor mechanism recommended by Staff in Docket No. E-01933A-
24 07-0402, as referenced in §8.1 of the TEP Settlement Agreement, was described on pages
25 10-13 in the direct testimony of Barbara Keene. Of particular significance to this
26 discussion, Ms. Keene's testimony contains the following passage:

1 Q. What does Staff recommend regarding the recovery of
2 renewable energy costs?

3 A. Staff recommends that the Environmental Portfolio Surcharge
4 or the subsequent REST Tariff, if approved, become an
5 adjustment mechanism. The initial amount of this adjustor
6 rate would be the same as contained in the current tariff,
7 *including caps*. An adjustment mechanism would allow an
8 easy process for future funding changes. Although Staff
9 recommends an adjustor mechanism for renewables, Staff's
10 proposed adjustor mechanism differs from the mechanism
11 that TEP has proposed in the REST Implementation Plan
12 docket.

13 Q. How would Staff's proposed Adjustor Mechanism work?

14 A. TEP would be able to file an application for Commission
15 approval to change the adjustor rate *and caps*. [p. 12, line 18-
16 p. 13, line 3. Emphasis added]

17 It is clear from this excerpt from Ms. Keene's direct testimony that caps are an
18 integral part of the REST adjustor mechanism recommended by Staff in Docket
19 No. E-01933A-07-0402. Yet neither the originally-filed RES Tariff Surcharge nor the
20 "Modified Tariff" Surcharge includes a cap. Consequently, both of these surcharge
21 "options" offered by TEP violate the requirements of Section VIII of the TEP Settlement
22 Agreement in that they are fundamentally inconsistent with REST adjustor mechanism
23 recommended by Staff in its direct rate design Testimony in Docket No. E-01933A-07-
24 0402.

25 AECC joined the TEP Settlement Agreement in reliance on these provisions
26 adopting the REST adjustor mechanism recommended by Staff, including the caps.

1 TEP's proposals to now change the REST rate design by offering REST surcharge
2 "options" that exclude caps are tantamount to a "bait and switch" tactic that should not be
3 countenanced by the Commission.

4 Further, the REST Rules require that TEP's REST Surcharge must be in
5 substantially the same form as the "REST Sample Tariff" included in the REST Rules.
6 [A.A.C. R14-2-1808.] The REST Sample Tariff has a cap in the rate design. Thus, the
7 originally-filed REST Surcharge and the "Modified Tariff" Surcharge proposed by TEP
8 are inconsistent with the REST Sample Tariff.

9 AECC strongly urges the Commission to reject the originally-filed REST
10 Surcharge and the "Modified Tariff" Surcharge proposed by TEP. The only REST
11 Surcharge option filed by TEP that should be considered by the Commission is the
12 "Proportional" option included in TEP's supplemental filing.

13 AECC notes that the Surcharge option proposed by Commission Staff in its
14 Memorandum dated January 5, 2010, conforms to the provisions of the TEP Settlement
15 Agreement and the Sample Tariff referred to in A.C.C. R14-2-1808.

16 **B. TEP's Proposed Recovery of "Lost Revenue" Associated with Customer-Sited**
17 **Distributed Generation Should Be Rejected.**

18 Exhibit 2 in the TEP REST Plan presents a summary of TEP's proposed cost
19 recovery. This summary includes \$1,275,000 in so-called lost revenue attributable to
20 customer-sited distributed generation. The implication of this line item is that customers
21 would be asked to fund not only the cost of distributed generation subsidies, production-
22 based performance payments, and TEP administrative costs, but they would also be
23 required to pay TEP over \$1.2 million per year to make up for TEP's claimed lost sales
24 due to customer-sited distributed generation.

25 This cost item is unsupported and unreasonable. TEP has not demonstrated the
26 basis for these costs. Moreover, the distributed generation subsidy program is funded by

1 customers, not TEP. Customers have no obligation to provide TEP with revenues to
2 compensate it for lost margins that may be incurred when distributed generation is
3 installed. If TEP's claim for lost revenues is valid, should customers also be asked to
4 compensate coal and natural gas suppliers for the reduction in their respective margins
5 when solar generation is installed? At what point do these sorts of claims on customers
6 end? Solar energy is already more expensive than conventional supplies. There is no need
7 to make it even more expensive by adding to it the cost of claimed lost margins on
8 conventional resources.

9 **C. TEP's Proposed "Utility Performance Incentive" for Development of**
10 **Customer-Sited Distributed Generation Should Be Rejected.**

11 Exhibit 2 in the TEP REST Plan indicates that TEP is proposing to recover
12 \$215,398 for a "utility performance incentive" associated with the development of
13 customer-sited distributed generation. The development of customer-sited distributed
14 generation is required by rule. The incremental cost of this development is funded by
15 ratepayers. REST cost recovery from customers should not be increased in order to award
16 TEP an incentive for complying with the Commission's rules.

17 **D. TEP's Proposal To Charge Customers Over \$6.6 Million for Expansion of**
18 **TEP's Solar Project at the Springerville Generating Station Should Be**
19 **Rejected or Deferred.**

20 TEP's original proposal seeks \$4 million in REST funding to expand its solar
21 project at the Springerville Generating Station. In its supplemental filing, TEP seeks an
22 additional \$2.64 million for this project. TEP's request for this funding is problematic.

23 First, this project is a capital investment. The expenditures for such projects are
24 normally capitalized and included in rate base. The investment costs (including return)
25 are then recovered over the expected life of the project. This standard approach aligns the
26 period of cost recovery with the period for which the project produces benefits. Contrary

1 to standard practice, TEP appears to be seeking to expense the total cost of the
2 Springerville Solar Project Addition in a single year. TEP's proposed approach
3 unnecessarily increases the upfront cost impact on customers.

4 Second, REST funding should only apply to incremental costs above the Market
5 Cost of Comparable Conventional Generation ("MCCCG") as described in the REST
6 rules. It is not clear from TEP's proposal whether the recovery TEP is seeking is
7 comprised of *total* costs of the solar addition or is limited to costs in excess of MCCCG.
8 Further, TEP provides no explanation regarding its proposed going-forward rate base
9 treatment of this asset.

10 For these reasons, AECC recommends that TEP's proposal to use REST funds to
11 expand its solar project at the Springerville Generating Station be rejected or deferred
12 until the questions surrounding the Company's proposal can be more fully addressed.

13 **E. TEP's Proposed Treatment of MCCCG Requires Further Evaluation Before**
14 **Approval Is Granted.**

15 A critical aspect of any REST Plan is the level of the MCCCG used in determining
16 the amount of REST funds that must be recovered from customers. All things being
17 equal, the lower the MCCCG, the more funds that must be recovered from customers to
18 acquire a given amount of renewable energy generation at a set cost. The importance of
19 the MCCCG increases as total REST requirements grows.

20 The principal behind REST funding is that it is intended to apply only to the
21 incremental cost of developing the targeted REST technologies. Utilities already have an
22 obligation to provide power to customers at existing rates. Thus, there is no reason to use
23 REST funding for the portion of renewable energy costs that is equivalent to the
24 incremental cost of conventional generation. Only to the extent that a targeted REST
25 technology causes the utility to incur costs in excess of the otherwise applicable
26 incremental cost of generation should REST funds be used for cost recovery. Because the

1 generation output from targeted REST technologies will be substituted for conventional
2 resources that the utility would otherwise have to supply, the natural financial incentive of
3 the utility is to propose an MCCCCG that is as low as possible.

4 The REST Rules identify the MCCCCG as “. . . the Affected Utility’s energy and
5 capacity cost of producing or procuring the incremental electricity that would be avoided
6 by the resources used to meet the Annual Renewable Energy Requirement, taking into
7 account hourly, seasonal, and long-term supply and demand circumstances. Avoided
8 costs include any avoided transmission and distribution costs and any avoided
9 environmental compliance costs.” [A.C.C. R14-2-1801.K] Thus, it is clear that the
10 Commission intends the MCCCCG to be a robust, “all in” avoided cost. Given this
11 background, several aspects of the treatment of MCCCCG in the proposed TEP REST Plan
12 require clarification.

13 First, as discussed above, TEP’s filing is unclear with respect to the application of
14 the MCCCCG to the proposed addition at the Springerville Generating Station.

15 Second, TEP’s filing is unclear as to its intended application of the MCCCCG to cost
16 recovery of customer-sited distributed generation. Specifically, REST funding for these
17 projects should only apply to the costs in excess of the MCCCCG. TEP’s filing is not clear
18 on this point.

19 Third, TEP’s filing appears to indicate that the MCCCCG will be determined after
20 the fact, i.e., at the “end of the year.” [TEP REST Plan, Exhibit 3]. AECC does not
21 object to an after-the-fact determination of the MCCCCG. Yet, Exhibit 4 of TEP’s filing
22 shows an MCCCCG value of \$39.59 per MWH. It is not clear from TEP’s filing whether
23 the \$39.59 per MWH value for MCCCCG is merely an indicative price (to be replaced at
24 the end of the year by an actual MCCCCG) or is the proposed final value of the MCCCCG.

25 If it is the latter, the proposed MCCCCG appears to be too low by a significant
26 margin. For example, at the end of 2009, the forward price of on-peak power at Palo

1 Verde for Calendar Year 2010 was in excess of \$53.00 per MWH. A price in this vicinity
2 appears to be more indicative of market cost of conventional generation than TEP's
3 proposed value, yet does not even include long-term capacity costs or avoided
4 transmission and distribution costs as provided in the REST Rule. Absent compelling
5 evidence to the contrary, AECC recommends that the MCCCCG be set no lower than the
6 forward price of on-peak power at Palo Verde for Calendar Year 2010, or else be
7 determined through an after-the-fact calculation that is subject to examination by parties
8 to this docket.

9 **II. AECC EXCEPTIONS**

10 **A. As a General Proposition, AECC Takes Exception to Any Provision in the**
11 **Proposed Order That May Conflict with the Positions of AECC Set Forth**
12 **Above.**

13 **B. Some Provisions Included in the TEP REST Plan , in Particular the Removal of**
14 **Caps in the REST Design, Would Require an A.R.S. § 40-252 Proceeding To**
15 **Implement and/or the Grant of a Waiver Pursuant to A.A.C. R14-2-1816, Or an**
16 **Amendment to the REST Rules.**

17 In any such proceeding, a Hearing would be required with Notice to affected parties,
18 and an opportunity to prepare for the Hearing including the preparation of Witnesses and
19 Exhibits.

20 RESPECTFULLY SUBMITTED this 8th day of January 2010.

21 FENNEMORE CRAIG, P.C.

22 
23 By

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